

Dear David L. South,

Enclosed please find a petition with the names of eighteen people who request a hearing on the draft Fenced Area Prospective Purchaser Consent Decree.

Given the complexity of our concerns and the fact that a request from ten people is generally sufficient to ensure a hearing, I have encouraged everyone to hold their comments and questions until they can be aired in a public setting with the folks from the Department of Ecology, the Everett Housing Authority, and others.

I look forward to the hearing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Beth", followed by a horizontal line.

Beth Burrows  
20319-92nd Avenue West  
Edmonds, WA 98020  
425-775-5383  
email: beb@igc.org

**RECEIVED**

JUN 18 2004

DEPT OF ECOLOGY

JUNE 13, 2004

DAVID L. SOUTH  
SITE MANAGER  
EVERETT SMELTER COMMENT  
WA DEPARTMENT OF ECOLOGY  
3190 160TH AVENUE SE  
BELLEVUE, WA 98008-5452

DEAR DAVID L. SOUTH,

WE, THE BELOW-SIGNED PERSONS, HAVE DEEP CONCERNS ABOUT THE DRAFT FENCED AREA PROSPECTIVE PURCHASER CONSENT DECREE FOR THE EVERETT SMELTER SITE IN EVERETT, WASHINGTON. WHILE WE MAY EACH INDIVIDUALLY CHOOSE TO SEND YOU OUR COMMENTS ON THIS MATTER, WE FEEL THAT A PUBLIC HEARING IS IN ORDER.

THE PROSPECTIVE PURCHASER CONSENT DECREE REFERS TO WHAT MAY BECOME A PRECEDENTIAL AGREEMENT, AFFECTING THE INTERPRETATION OF THE LAW THAT LED TO THE EVERETT SMELTER SITE CLEANUP AND AFFECTING THE FUTURE PUBLIC HEALTH, REPUTATION, AND ECONOMIC GOOD OF OUR COMMUNITY. FOR THESE REASONS AND SO AS TO ENSURE THAT OUR CONCERNS ARE ADDRESSED PUBLICLY IN A MANNER CONDUCIVE TO PUBLIC ATTENTION AND DELIBERATION, WE FORMALLY REQUEST THAT YOU CONVENE A PUBLIC HEARING ON THIS MATTER.

WE WOULD BE GRATEFUL IF YOU WOULD INFORM US INDIVIDUALLY OF THE DATE AND PLACE OF THE HEARING. THANK YOU.

SINCERELY,

1. NAME: BETH BURROWS  
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PHONE: 425-775-5383  
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2. NAME: Margery H. Krieger  
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3. EDWIN G. BURROWS  
20319-92nd Ave. West  
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(no email)

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5. NAME: NORMA BRUNS  
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7. NAME: Susan V. Schaefer Susie Schaefer  
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EDMONDS, WA 98020 Edmonds, WA 98020  
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EMAIL: \_\_\_\_\_

8. NAME: Jaida Wood  
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REQUEST FOR PUBLIC HEARING - EVERETT SMELTER SITE

PAGE 3

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 EMAIL: \_\_\_\_\_

10. NAME: ROBERTA STELSON  
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11. NAME: Amy Mason  
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12. NAME: Lorraine Evans  
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13. NAME: Wayne Tom Miller  
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14. NAME: JERRINE L VALENTINE

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15. NAME: Dawna L. Lahti

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Edmonds, WA 98026

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

16. NAME: Sim R. Lahti

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PHONE: \_\_\_\_\_

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17. NAME: Mary L. Hovander

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18. NAME: GREGG SMALL

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**Remarks of Beth Burrows**  
Public Hearing on the Everett Smelter Site  
July 7, 2004

My name is Beth Burrows. I am the director and president of the Edmonds Institute, a public interest, non-profit group concerned with environment and technology. Tonight, however, I am here in my private capacity, as a citizen of the State of Washington.

I have lived in Edmonds, Washington, at 20319-92nd Avenue West, for about two decades. Some years ago, I was privileged to have been appointed to a four-year term on the Northwest Regional Citizens' Advisory Committee for the state's Model Toxic Control Act. I was on that Committee at the time the Everett cleanup began. I regret that in the years subsequent to my term on that Committee, I did not follow more carefully the details of the proposed cleanup. I do recognize that my lack of diligence in that regard may be responsible for some of the questions that I ask here tonight.

I wish to emphasize that what I am presenting here tonight is a series of questions, not an indictment. Some of these questions may have been answered elsewhere. Some I have already mentioned to people in the Everett Housing Authority and in the Washington State Department of Ecology. The answers I have received or been able to ferret out from the documents to which I was pointed were not entirely clear to me. In talking with others, I find they share my confusion and need for answers. So, it is my hope that the authorities assembled here and those who may not have been able to attend tonight will answer all the questions in a thorough and public way. It is my further hope that what we are engaged in here is a completely transparent and mutually educative process, done for the benefit of the community.

The Everett cleanup has gone on for a long time and for that cleanup to come to a safe and agreeable end from the standpoint of environmental and human health, it is necessary for the community of people in this state to really understand and have confidence in what is happening and what is being planned. Thus, it is hoped that if my questions are technically out of place, they will be answered nevertheless. And if my questions already seem answered to the designated "experts", they will have the patience to explain again.

I am providing copies of my questions so that I may read them aloud all at once and if, for some reason, there is not time to answer them all in detail tonight, I would hope that I will receive written answers in the near future.

I have grouped my questions into several broad areas of concern:

**(a) Questions about whether the cleanup will actually result in property that will be safe for people to live on:**

Are two feet of clean soil really enough to make the property safe? What is the

scientific basis for the choice of two feet? Further, how is it possible to maintain that two feet of clean topsoil, particularly if the land is to be developed? Will a piece of material two feet down really will act as a message to those who might find it that they should dig no further? Is that likely to be an effective safety strategy with people who may want to plant trees in their back yard, add berms or create other landscaping features, allow their children to play and dig in the yard, find moles on their property, become the third or fourth owners or residents of the property (and therefore conceivably not properly advised of the safety problems)? What about (future) residents and owners who may not speak English? Whose job is it to see that they will be properly informed? If the Everett Housing Authority sells the property to a private developer - and I understand that is the hope - who will ensure that that developer and those he/she sells to will exercise due diligence in regard to the safety issues of the property? Will restrictive covenants be enough? How will they be monitored and enforced? Will it remain the state's job to watchdog the writing and implementation of those covenants? What is the process for investigation and redress at each point in time should these covenants prove unenforced or unenforceable?

Further, who will protect whatever workers may excavate to enable the property to be "developed"? Has the Department of Labor been apprised of the problems at this site and the fact that "development" there may require special precautions? Who guarantees that a technique (the cloth two feet down) that works with land being used for mining will work with land being proposed for residential development? Who guarantees the cloth won't rot? Who guarantees that if the cloth is impermeable, the land above it will be stable? Do we really believe that workers who dig post holes will cover the excavated material and later use it to fill the hole once the posts are in place? Who will oversee this process? Who will inform the construction workers?

**(b) Questions about the liability for the land within the fenced area:**

Who exactly will be liable if it is later determined that the property is not safe to live on? If no private person or corporation has liability, won't the state - or the city of Everett - simply be assuming liability for the health of the people who come to live on that land? Is it the state's intention to do this? If the state is assuming liability, where is the trust fund for medical costs in case the Department of Ecology and Department of Health estimates about safety are wrong? Will Asarco be exempt for liability once this deal is made? If the City of Everett buys the property, irrespective of whether or not the city transfers it or sells it to another party, which potential subsequent problems, if any, will the City of Everett be liable for? (And if the city is liable, who will pay for whatever costs may be related to that liability?) If long-term monitoring is required, who will ensure that subsequent developers will do the required monitoring and perform any actions the necessity of which are made apparent by that monitoring? What kinds of clauses will be put in the sale contract for this land to ensure that after it is purchased by a developer, the previous owners, including the City of Everett, are not liable for any health or environmental



problems that may issue from this land? And if the City of Everett is not liable, what will happen should Asarco go bankrupt? And if Asarco, Ecology and the City of Everett are not liable, does that mean the developer will be liable? And in what court will the subsequent residents go to pursue that developer, or Asarco, or the City of Everett, should such need arise? And if no one is liable, how will whatever peoples who may come to live on the land be informed of the fact that, should they get ill, the problem is theirs alone? What warnings will they have? And who will guarantee that those warnings are properly issued, including issuance in a language understood by the residents? (Here I mean language understandable both in terms of transparency of meaning and in terms of written in a language known to the resident.) What will be legally required for any subsequent residents on this property to be able to prove that they were never told of the problems associated with the property, the injunctions about digging below two feet, and so on?

Would it be possible for the parties to this proposed agreement to create a simple chart indicating (1) who is liable for what at each point in time that a change or alteration is made to the property or its ownership and (2) what exactly at each point is the process to be followed for those seeking redress from the liable party (should that party not perform as required), including arbitration, judicial, and appeal processes.

(c) **Questions about the legality of the deal itself:** Because it is proposed that the land be sold/transferred to the Everett Housing Authority (EHA), the final stage of the cleanup is eligible for a million dollar grant. The grant is apparently only available to local units of government. However, it is - if I understood my conversation a few days ago with the head of the Everett Housing Authority - the hope of the Everett Housing Authority to sell that land within a year to a private party. Is this counter to the intention of the law that makes that million dollars available? Put bluntly, is this fraud insofar as the million dollar grant is concerned? (Here I would hope that someone from the State Attorney General's office, will respond.) What was the intent of the law that made that money available? Isn't the intent of that law to benefit local governments, not local developers? Does EHA already have a developer waiting to buy this property, once it is cleaned up? Will the bill of sale exempt that developer from liability related to health issues of those who may come to live on the property? How can we ensure that whoever may come to live on this land will know who exactly is liable for what and how redress may be sought? Here again I beg for that simple chart I mentioned earlier. And by simple, I mean easy to understand.

(d) **Other questions:**

Soil from the Everett site will be moved to a site in Tacoma. If the site in Tacoma causes difficulties for the citizens of that city, will the people of Everett be in any way liable for costs related to those difficulties (because soil in Everett was in some way

involved)? Why is the soil not being moved to a hazardous waste facility?

Monitoring outside the site will proceed in some sense. What exactly is being monitored and how will the public be made aware in a timely manner of the results of that monitoring? What provisions are made in case at some future date pollution/contamination/seepage from outside the site causes difficulties on the site? Is there of burden of notification - and if so, on whose part - to notify the residents, if any, of the Everett Smelter Site? And if there are residents and they are not notified and health problems ensue, again, what is the process by which they may seek remediation and redress?

To what degree is this deal being motivated by fears that Asarco may go bankrupt or continue to sue the Department of Ecology? What happens if Asarco does go bankrupt? What happens if Ecology or EHA do not have funds sufficient to cover any costs related to their own liabilities?

In some ways, this cleanup is precedential. Do you envisage that the kinds of grants and funds available in this case will continue to be available for other sites? Do you find that the procedures whereby this site has been made less polluted have been successful? Has the Department of Health actually monitored the health of those who live or have lived on this site? Is there provision to monitor their health and that of their descendants over time so that we may come to know whether there was indeed a health impact from living on this land and whether that impact was mitigated by this cleanup?

According to the Prospective Proposal (PP), changes in the Consent Decree only trigger public notification and opportunity for comment if the proposed changes are "substantial"? What does that mean? How is "substantial" measured? Substantial in terms of what? Likely impacts on the human and environmental health?

The PP sets forth a dispute resolution procedure but it only relates to the Parties to the deal. What about the public? What is the public's avenue of redress if they disagree with how party dispute resolutions are "resolved"?

Please explain the Covenant Not to Sue and how that covenant benefits the public or future residents in the site, if at all? If releases of hazardous substances do occur at the site, who will be liable (for cleanup, for remediation, for health costs)? The state?...How will all this work if EHA sells/transfers the land to a private developer?

#### OTHER CONSIDERATIONS:

I thank you for your patience in hearing my questions and I look forward to your answers. I do have other questions related to the specific wording of the Consent Decree, but I will put those aside to hear your answers to my already too-lengthy presentation. If there is not time at this hearing, I hope I may make public any

communications you may send me in response to the questions I have already posed.

Finally, let me say that I am grateful to all those who have made tonight's hearing possible. In particular, I am grateful to the citizens of this state who created a law that foresaw the need for a comment process at every point in the cleanup of hazardous waste. I am grateful to those officials whom I contacted and who called me back only to hear me say that I thought a public hearing was more appropriate than a private conversation for the airing of these issues. And I am grateful to those officials who have come here tonight at the public's behest. It is my sincere hope that I will discover that they have been commendable in their provision for public and environmental health and care for the costs to contemporary and future taxpayers. It is also my hope that when this entire site is cleaned up to the satisfaction of all concerned, we will not simply say, "Thank heaven that is over," but will understand the real takeaway lesson in all of this -- We cannot pollute or allow the pollution of our environment any more; the cleanup costs are simply beyond our ability to foresee or to pay or to recover. We may think that it is only the polluter who pays, but the truth is that we all do. We all do. As I think we have learned in Everett and throughout our state, we all pay.

Thank you.

**Questions & Concerns Raised at the  
Ecology Public Hearing on  
Amended Prospective Purchaser Consent Decree, Fenced Area  
July 7, 2004**

(See separate questions/comments raised by Beth Burrows.)

The public health district advisory with health information has been discontinued. Is there enough money to provide health advisory information to property purchasers? A lot of potential buyers are not being informed. In the 1990s the health advisory was available.

Concern that Asarco workers have been exposed during site maintenance work. The health authority representative is no longer available.

We were informed that there would be a barrel program for post hole, etc. digging to dispose of soil. Program has not been implemented. Community members are doing their own digging and disposal of soil offsite. There is no program to control this activity.

What about recontamination of yards from work being done in the fenced area? Dave Taylor requested that his property be retested after remediation to ensure that there has been no recontamination.

Where are we in the process? What happens next?

Will \$1 million be enough to clean up properties?

What are the limits of the cleanup? Will properties outside the fenced area be cleaned up?

How will information be provided by the EHA and the developer to new owners? What about translated materials for non-native English speakers?

Can you provide a simple chart regarding liability that clearly explains the situation to the general public and landowners? Is there money to fund this type of information? Maybe you should look into grants (e.g., Bullitt Foundation) for funding of the chart and health advisory (writing and printing costs).

What things are being done to protect residents now?

Concern about liability—Asarco, EHA, State?

Concern about deed restrictions.

What about other alternatives for land use besides housing?

Almost all of the comments in the past were from residents within the Fenced Area. They thought it would later become a park. Now it is going to be residential. Cost of new houses will be more than \$200, 000. These residents sold their properties for around \$100, 000. Concern now that the new homes will cause traffic impacts. A large sewer and wide road will be required. Real estate contracts could be challenged in court successfully.

Is the rezone hearing scheduled for July 22nd?